

Stephen M. Kemp, City Attorney (010026)

**OFFICE OF THE CITY ATTORNEY
CITY OF PEORIA**

Melinda A. Bird, Assistant City Attorney (013163)

Michael Wawro, Assistant City Attorney (020056)

Physical Address:

8401 West Monroe Street, Room 280
Peoria, Arizona 85345

Mailing Address:

Post Office Box 4038
Peoria, Arizona 85380-4038
Telephone: (623) 773-7330
Facsimile: (623) 773-7043
Email: caofiling@peoriaaz.gov
Attorneys for the City of Peoria

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

DAVID DOMINGUEZ MENDOZA,)
individually and as the natural father)
and next friend for and on behalf of)
his natural child,)

a minor,)

Plaintiff,)

v.)

CITY OF PEORIA, a municipality, by)
and through its Police Department,)
an Agency of the City of Peoria,)
CITY OF PEORIA POLICE)
DEPARTMENT, an Agency of the)
City of Peoria; DOES I through XX,)
inclusive; ABC PARTNERSHIPS I)
through XX, inclusive; and BLACK)
CORPORATIONS I through XX,)
inclusive,)

Defendants.)

Case No. _____

**NOTICE OF REMOVAL OF
MARICOPA COUNTY SUPERIOR
COURT CASE NO. CV2012-004210
TO THE UNITED STATES DISTRICT
COURT**

1 The undersigned, Michael Wawro, Assistant City Attorney, as attorney
2 authorized to represent Defendants, City of Peoria and City of Peoria Police
3 Department, submits this Notice of Removal pursuant to 28 U.S.C. § 1446(a), and
4 provides as grounds for removal the following:

5 1. On February 17, 2012, Plaintiff filed a Complaint under case number
6 CV2012-004210 in the Maricopa County Superior Court.

7 2. On June 19, 2012, Defendants filed a Motion for More Definite
8 Statement; Plaintiffs filed their Response on July 12, 2012 and Defendants filed
9 their Reply on July 24, 2012.

10 3. On August 3, 2012, Judge Maria Del Mar Verdin granted Defendants
11 Motion for a More Definite Statement, ordering:

12 “Specifically and without graphics, the court directs that the
13 Plaintiffs list in one paragraph for each specific claim 1) the
14 cause of action, 2) the elements of the cause of action, and 3)
15 brief summary of facts to support the claim. Additionally, again
16 in a paragraph, the Plaintiff is directed to advise which, if any,
17 federal claims are being sought so that the Defendants can
18 properly respond.”

19 4. On August 22, 2012, Defendants filed a Motion to Strike Complaint for
20 Failure to Comply with A.R.Civ.P. 12(e), Plaintiff filed their Response August 31,
21 2012 and Defendants filed their Reply September 11, 2012. On September 18,
22 2012, the Court denied Defendants’ Motion to Strike.

23 5. On August 23, 2012, Plaintiff filed an Amended Complaint in the
24 Maricopa County Superior Court.

25 6. On September 18, 2012, Defendants filed a Motion to Dismiss First
Amended Complaint pursuant to Ariz.R.Civ.P. 41(b) for Plaintiff’s failure to follow
the Superior Court’s orders. Plaintiff filed their Response on October 4, 2012 and
Defendants filed their Reply on October 11, 2012.

7. On December 5, 2012, the Superior Court ruled:

1 “The Court agrees that the Amended Complaint filed fails to
2 comply with the Court’s expectation. Nevertheless, a sanction
3 dismissing the matter would harshly sanction the litigant for
4 counsel’s lack of compliance. Therefore, the Court grants the
5 Plaintiff one more opportunity to adhere to the Court’s previous
6 ruling. IT IS ORDERED reaffirming the previous order of
7 August 2, 2012 and granting Defendants’ Motion for a More
8 Definite Statement filed June 19, 2012.”

9 The Superior Court ordered compliance to be on or before January 10, 2013 and
10 “[g]iven the circumstances, the Court finds that an award of attorney’s fees to the
11 Defendants as it pertains to the filing of this Motion only is appropriate at this
12 time.”

13 8. Plaintiffs’ (Second) Amended Complaint, marked January 7, 2013,
14 was actually mailed January 8, 2013, along with a Notice of Lodging and was
15 received by Defendants January 14, 2013.

16 9. Plaintiffs’ (Second) Amended Complaint brings one or more claims
17 alleging civil rights violations arising under the Constitution or laws of the United
18 States. See (Second) Amended Complaint at ¶¶ 50-59.

19 10. By reason of the above, the United States District Court has original
20 jurisdiction of this civil action and the case is removable. 28 U.S.C. §§ 1331, 1441.

21 11. Defendants filed this notice within thirty (30) days after receipt of a
22 pleading, motion, order or other paper from which it may be ascertained that the
23 case is one which is or has become removable and removal is therefore timely.
24 28 U.S.C. § 1446(b)(1).

25 12. Defendants have pled and otherwise appeared in the action, but that
was prior to Plaintiff’s assertion of federal claims subjecting this case to removal.

13. The documents that constitute all the process, pleadings, and orders
filed in this case are listed in the attached index attached and incorporated as
Exhibit A and filed herewith. 28 U.S.C. § 1446(a).

WHEREFORE, City of Peoria requests that the action be removed from the Superior Court of Maricopa County to the United States District Court for the District of Arizona, and that further proceedings in the Arizona Superior Court of Maricopa County regarding the action be stayed pursuant to 28 U.S.C. § 1446.

**OFFICE OF THE CITY ATTORNEY
CITY OF PEORIA**

/s/ Michael Wawro
Michael Wawro, Assistant City Attorney
Attorney for the City of Peoria

CERTIFICATE OF SERVICE

I hereby certify that on February 5th, 2013, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

INITIAL REMOVAL, NOT YET KNOWN

COPY mailed to:

Luis P. Guerra, Esq.
LUIS P. GUERRA, L.L.C.
6225 North 24th Street
Suite 125
Phoenix, Arizona 85016
Attorney for Plaintiffs

Scott B. Zwillinger, Esq.
GOLDMAN & ZWILLINGER, PLLC
7047 E. Greenway Parkway, Suite 150
Scottsdale, Arizona 85254
Attorney for Plaintiffs

/s/ Dorothy Ann Gabbard